

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 02-075-19-1-5-01097-19
Petitioners: John & Stephanie Schoonmaker
Respondent: Allen County Assessor
Parcel: 02-11-10-227-017.000-075
Assessment Year: 2019

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioners initiated their 2019 assessment appeal with the Allen County Assessor on May 17, 2019.
2. On October 31, 2019, the Allen County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On January 30, 2020, Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing. Neither the Board nor the ALJ inspected the property.
5. John Schoonmaker appeared *pro se* and was sworn. Allen County Assessor's Office employee Andrew J. Smethers appeared for the Respondent and was also sworn.

Facts

6. The residential property under appeal is located at 9509 Illinois Road in Fort Wayne.
7. The PTABOA determined the 2019 total assessment was \$152,900 (land \$23,700 and improvements \$129,200).
8. On their Form 131, the Petitioners requested a total assessment of \$123,700 (land \$23,700 and improvements \$100,000).¹

Record

9. The official record for this matter is made up of the following:

¹ Throughout the hearing Mr. Schoonmaker requested several different assessed values.

a) A digital recording of the hearing.

b) Exhibits:

Petitioners Exhibit 1: Exhibit list, contentions, and assessment computations,
Petitioners Exhibit A: 2018 subject property card; building permit issued September 25, 2018,
Petitioners Exhibit B: 2019 subject property record card,
Petitioners Exhibit C: January 14, 2020, sale listings for 10 homes on realtor.com,
Petitioners Exhibit E: Price per square foot analysis,
Petitioners Exhibit F: 2014-2019 market trending summary from “UPSTAR;” photographs of the subject property,
Petitioners Exhibit G: Email from Mr. Smethers to Mr. Schoonmaker dated January 29, 2020, listing the subject property’s 2014-2019 assessments.²

Respondent Exhibit A: 2018 subject property record card,
Respondent Exhibit A.1: Building permit issued September 25, 2018,
Respondent Exhibit B: 2019 subject property record card,
Respondent Exhibit C: Sales-comparison analysis using “2018 sales of homes on major roadway,”
Respondent Exhibit C.1: Aerial photographs and descriptions of properties used in the “major roadway” sales-comparison analysis,
Respondent Exhibit C.2: THE APPRAISAL OF REAL ESTATE (14th ed.), APPRAISAL INSTITUTE, pp. 401-402,
Respondent Exhibit D: Sales-comparison analysis using “2018 sales of homes in immediate area,”
Respondent Exhibit D.1: THE APPRAISAL OF REAL ESTATE (14th ed.), APPRAISAL INSTITUTE, pp. 401-402,
Respondent Exhibit E: Price per square foot analysis,
Respondent Exhibit F: 2014-2019 market trending summary from “UPSTAR;”
Respondent Exhibit F.1: January 2015 “UPSTAR” trending data,
Respondent Exhibit F.2: January 2016 “UPSTAR” trending data,
Respondent Exhibit F.3: January 2017 “UPSTAR” trending data,
Respondent Exhibit F.4: January 2018 “UPSTAR” trending data,
Respondent Exhibit F.5: January 2019 “UPSTAR” trending data.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

² The Petitioners did not offer an exhibit labeled Petitioners’ Exhibit D.

Objections

10. Mr. Schoonmaker objected to Respondent's Exhibits C.2 and D.1, both the exact same excerpt from the Appraisal of Real Estate. Mr. Schoonmaker argued the Respondent did not provide him with copies of the evidence prior to the hearing. In response, Mr. Smethers argued the evidence is "text out of a lot of things he relied upon (and) some of things are not part of the record, but nonetheless go to his experience as a Level III Assessor-Appraiser." The ALJ took the objection under advisement.
11. The Board's small claims procedural rules provide that, if requested, "the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d). The rules further provide that failure to comply with that requirement "may serve as grounds to exclude evidence or testimony that has not been timely provided." 52 IAC 3-1-5(f) (emphasis added). Here, there is no indication the Petitioners ever requested that evidence be exchanged prior to the hearing. Consequently, the objection is overruled, and Respondent's Exhibits C.2 and D.1 are admitted.

Contentions

12. Summary of the Petitioners' case:
 - a) The subject property is over-assessed. Based on the current listing prices of other homes and the Petitioners' own calculation of price per square foot, the 2019 assessment should be reduced to \$145,650.14. *Schoonmaker argument; Pet'rs Ex. 1.*
 - b) Mr. Schoonmaker examined sale listings for 10 properties as of January 14, 2020. He included listings from zip code 46804 but excluded custom-built homes. The highest price per square foot of any of the listed homes came out at \$74. The 2019 assessment of the subject property was based on \$74 a square foot. With that being said, the subject property is located in one of the oldest communities in the area and requires "many" repairs before it could be sold for \$74 per square foot. *Schoonmaker argument; Pet'rs Ex. C.*
 - c) In his analysis, Mr. Schoonmaker calculated the average price per square foot of the 10 listings to compute his requested assessment. The average price per square foot equated to \$67.60. Based on the property's 2,217 square feet, he computed a value "before deductions" of \$149,869.20. From there, he removed the \$23,700 land assessment and was left with an improvement value of \$126,169.20. *Schoonmaker testimony; Pet'rs Ex. 1.*
 - d) Mr. Schoonmaker then adjusted his improvement value by the same percentages of normal depreciation (40%), abnormal obsolescence (5%), and neighborhood factor (161%) the Respondent used. After those adjustments were made, the improvement value came out to be \$115,785.47. Mr. Schoonmaker then added back in the land

value of \$23,700. The total value of the property based on this calculation is \$139,485.47, or \$62.92 per square foot. This was the Petitioners' "original value request." *Schoonmaker testimony; Pet'rs Ex. 1.*

- e) However, according to the Respondent's analysis, homes in the area "sell for as low as \$72.79 per square foot." The difference between \$62.92 per square foot and \$72.79 per square foot converts to a value difference of \$8,468.94 for the subject property. Mr. Schoonmaker's estimated "total bill to repair the home and get it in selling condition is \$58,000, which would give him a 15% return on investment." Accordingly, when he spent \$18,000 to install the furnace and air conditioning, and based on the resulting increase in his assessment, his return on investment was 38%. For this reason, he conceded his original request of \$139,485.47 was too low. *Schoonmaker testimony; Pet'rs Ex. 1.*
- f) For this reason, Mr. Schoonmaker examined his incremental assessment increases dating back to 2015 and prepared a new assessment calculation based on a \$70.63 per square foot value. He performed the same calculation as above, and computed a value of \$145,650.14, or \$65.70 per square foot. *Schoonmaker testimony; Pet'rs Ex. 1.*
- g) Finally, according to Mr. Schoonmaker, he "believes there is a law" prohibiting taxes from going up more than 1%. Mr. Schoonmaker went on to argue that if there is no such law, one should be implemented, because if taxes continue to increase, people will be unable to keep their homes. *Schoonmaker argument.*

13. Summary of the Respondent's case:

- a) The current assessment is correct. To support this contention, the Respondent relied on two sales-comparison analyses, both indicating a slightly higher value than the current assessment. With that being said, the Respondent is requesting the assessment remain at \$152,900. *Smethers argument.*
- b) The subject property was built in 1970 and has had "limited updates and upgrades." It has been assessed in fair condition with a C-1 grade and 5% additional obsolescence to account for needed repairs. Prior to 2019, the assessment reflected a deduction for lack of heat and no addition for central air conditioning. The assessment increased more than other properties between 2018 and 2019 because of the addition of "the new HVAC system, heating, ventilation, and air conditioning." These items were added in October 2018 and were assessed for the first time in 2019. *Smethers testimony; Resp't Ex. A, A.1, B.*
- c) In his first sales-comparison approach Mr. Smethers selected three properties "that border a major road (with the) driveway coming off the side street" similar to the subject property. However, the properties' characteristics are not traditionally comparable to the subject property. *Smethers testimony; Resp't Ex. C, C.1.*

- d) Mr. Smethers adjusted his comparable properties to account for differences. He adjusted for size, foundation type, attic finish, garage type, fireplace, exterior features, grade, and effective age. Mr. Smethers' analysis also includes a line for the number of bedrooms, but he made no adjustments to account for differences. The largest adjustments are for quality and condition because the subject property needs some work. *Smethers testimony; Resp't Ex. C, C.1.*
- e) Mr. Smethers derived his adjustments from the Department of Local Government Finance's (DLGF) cost tables. The costs are depreciated and multiplied by a location cost multiplier which makes them relevant to Allen County. According to Mr. Smethers, cost adjustments are most persuasive in markets with limited sales activity. Under this analysis, the estimated value for the subject property equated to \$153,430. *Smethers argument; Resp't Ex. C, C.2.*
- f) In his second sales-comparison analysis, Mr. Smethers set the parameters for his comparable sales as ranch homes without basements built between 1950 and 1979. In other words, Mr. Smethers chose comparable properties "based on the property attributes alone." Therefore, the adjustments for differences, again based on depreciated cost, were smaller than in his first analysis. This analysis yielded a value of \$154,670 for the subject property. *Smethers testimony; Resp't Ex. D, D.1.*
- g) Mr. Smethers also performed a price per square foot analysis. He selected 17 properties that sold in 2018, all located in Aboite Township. Each property measured over 1,800 square feet and none had basements. The average price per square foot was \$83.93. The subject property is currently assessed at \$68.97 per square foot. This fact serves as affirmation that the current assessment is correct. *Smethers testimony; Resp't Ex. E.*
- h) Additionally, the annual market trend according to "UPSTAR" supports the current assessment. The Petitioners purchased the property for \$110,000 on May 4, 2013. The market trend indicates the property should be worth \$158,334 as of the 2019 valuation date. *Smethers testimony; Resp't Ex. F.*
- i) Finally, Mr. Smethers argued even if none of the analyses by themselves are probative in the Board's view, the preponderance of the evidence is sufficient to make a prima facie case to sustain the current assessment. *Smethers argument.*

Burden of Proof

- 14. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exception to that rule.

15. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
16. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
17. Here, the Petitioners argued the burden of proof should shift to the Respondent because the assessment increased more than 5%. The assessment increased from \$137,100 in 2018 to \$152,900 in 2019, an increase of 11.5%. However, the Respondent argued “the property changed” from 2018 to 2019. According to Mr. Smethers, the home did not have heating or air conditioning on January 1, 2018, and was assessed accordingly. A building permit was issued on September 25, 2018, and, according to Mr. Schoonmaker, a heating and air conditioning unit was installed in October 2018. This improvement was first considered in the 2019 assessment of the property. According to Ind. Code § 6-1.1-15-17.2(c) “[T]his section does not apply to an assessment if the assessment that is the subject of the review or appeal is based on: (1) substantial renovations or new improvements;...that were not considered in the assessment for the prior tax year.”
18. A significant improvement was made to the property between January 1, 2018, and January 1, 2019. This new improvement was first considered for the 2019 assessment year. Thus, according to Ind. Code § 6-1.1-15-17.2(c) the burden shifting statute does not apply and the burden remains with the Petitioners.

Analysis

19. The Petitioners failed to make a prima facie case for reducing the 2019 assessment.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any

other information compiled in accordance with generally accepted appraisal principles.

- b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
- c) As discussed above, the Petitioners have the burden of proof. In an effort to prove their case, Mr. Schoonmaker prepared what amounts to a price per square foot analysis. More specifically, Mr. Schoonmaker relied on 10 sale listings within the subject property's zip code, and an estimate of the repair costs, to develop a requested assessed value. In presenting these listings, the Board can infer the Petitioners are attempting to somewhat rely on the sales comparison approach to establish the market value-in-use of the subject property.
- d) For sales comparison data to be probative, the purportedly comparable properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not show comparability. *See Long*, 821 N.E.2d 466, 470. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the purportedly comparable properties and how any relevant differences affect the properties' relative market values-in-use. *Id.* at 471.
- e) The type of analysis required by *Long* is lacking from the Petitioners' case. The evidence presented fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the subject property. While Mr. Schoonmaker did testify that the properties are located in the same zip code, and the subject property likely needs numerous repairs to bring it up to the level of the listed properties, he did not adequately quantify or adjust for specific differences.
- f) Additionally, the Petitioners failed to offer any evidence that submitting listing prices and computing a price per square foot comports with generally accepted appraisal principles. Thus, the Petitioners' analysis lacks probative value.
- g) Finally, the Petitioners offered nothing to support the notion that taxes on a property cannot go up more than 1% per year. Perhaps Mr. Schoonmaker was thinking of what is commonly referred to as the "tax cap" statute, which provides credits that effectively cap property tax liability on a homestead at 1% of gross assessed value.
- h) Where Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not

triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).³

Conclusion

20. The Petitioners failed to make a prima facie case for reducing the current assessment. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions, the 2019 assessment will remain at \$152,900.

ISSUED: June 26, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

³ While the Respondent offered analyses that indicated slightly higher values than the current assessment, the Respondent did not request that the assessment be increased.